

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 30 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the concerned : NO
Magistrate/Magistrates, Judge/Judges, Tribunal/Tribunals?

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BHUPAT BACHUBHAI KOLI

Versus

STATE OF GUJARAT

Appearance:

1. Criminal Appeal No. 30 of 2001
MR SHAKEEL A QURESHI for Petitioner No. 1
MR P.R.ABICHANDANI, ADDITIONAL
PUBLIC PROSECUTOR for Respondent No. 1
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CORAM : MR.JUSTICE A.L.DAVE

Date of decision: 23/08/2002

ORAL JUDGEMENT

The appellant came to be convicted by Sessions Judge,
Junagadh for offences punishable under Sections 306 and

498A of IPC, by judgement and order rendered by the learned Sessions Judge in Sessions Case No. 182/96, on October 19, 2000. The appellant was sentenced to undergo RI for six years for the offence punishable under Section 306 IPC and was ordered to pay a fine of Rs. 3,000/- or to undergo SI for one year in the event of default in payment of fine. The appellant was sentenced to RI for 2 years for the offence punishable under Section 498A IPC and to pay a fine of Rs 2,000/-, in default to undergo SI for 3 months. The sentences were ordered to run concurrently.

2. The facts of the case in brief can be stated thus:

2.1 The appellant was married to Shardaben, daughter of Mangabhai Ranchhodbhai Makwana about 5 years prior to the incident, which took place on June 13, 1986 at about 15.45 hours. It is the case of the prosecution that the appellant used to ill-treat Shardaben and used to cause physical and mental harassment. He used to give her beating and as a result thereof Shardaben committed suicide at about 15.45 hours on June 13, 1986 by pouring kerosene on herself and setting herself ablaze.

2.2 An FIR came to be registered by the father of the deceased on 14.6.1986 at about 14.45 hours with Keshod Police Station, on the basis of which offence was registered and investigation made. Upon investigation it was found by the investigating agency that the appellant and his parents were ill-treating the deceased Bai Sharda and therefore it filed a charge-sheet against them for the offence punishable under Section 498A of IPC.

2.3 However, before the case come up for evidence, on motion of learned APP, further investigation was directed by the Court and a further report was made by the Police to the effect that offence punishable under Section 306 was also committed by the accused persons. Case was therefore committed to the Court of Sessions and Sessions Case No. 182 of 1996 came to be registered by the Sessions Court, Junagadh.

2.4 The prosecution led evidence, both oral and documentary, and considering the evidence led by the prosecution, the Sessions Court came to a conclusion that the prosecution was able to prove charges for offences punishable under Sections 498A and 306 IPC against accused No.1 - the present appellant and therefore recorded conviction for the said offences and imposed punishment as stated above.

2.5 Father of the appellant Bachu Lagar Koli had expired pending the trial and case against him therefore got abated.

2.6 Mother of the appellant - Valiben, who was original accused No.3, came to be acquitted by the learned Sessions Judge.

2.7 Aggrieved by the said judgement and order, the appellant - original accused No.1 has preferred this appeal. Admittedly, no appeal is preferred by the State either for enhancement of the sentence or against acquittal of Valiben - mother of the appellant - original accused No.3.

3. Learned Advocate Mr. Qureshi appearing for the appellant has taken this Court through the record and proceedings. He has drawn attention of this Court to depositions of three material witnesses, namely - Jayanti Manga, Ex. 15, Dilip Manga, Ex.17 and Gomtiben Manga Ex.18, who happen to be brothers and the mother respectively of the deceased. He submitted that in entire evidence there is not a whisper about any ill-treatment in recent past to the incident. He submitted further that there is nothing to indicate that there was any abetment on the part of the appellant which could have prompted the deceased to commit suicide. The only material is that there was Shrimant ceremony on the next day of the incident and according to the witness the deceased was not permitted to attend that ceremony. What is the source of information is not indicated by the prosecution. Except this bald allegation, there is no evidence of ill-treatment or abetment for committing suicide on the part of the appellant. Learned Sessions Judge has therefore, committed an error in recording conviction for offence punishable under Section 306 of IPC.

3.1 Mr. Qureshi submitted that the evidence of these witnesses speaks of some ill-treatment and some beating given by the appellant in past. In recent past of the incident there is no allegation and no material. There is no independent evidence led by the prosecution either to support ill-treatment or physical harassment or mental torture; that conviction under Section 498A is also therefore erroneously recorded by the learned Sessions Judge. He therefore urged that this appeal may be allowed. He has placed reliance on decision in the case of Sanju alias Sanjay Singh Sengar Vs. State of Madhya Pradesh, reported in 2002 AIR SCW 2035 and submitted that

the apex Court negatived the prosecution case of abetment when the accused had said 'to go and die' to the deceased two days prior to the incident of suicide. In the instant case, there is not an iota of evidence of such a nature and therefore, appeal may be allowed.

4. The appeal is opposed to by learned APP Mr. P.R.Abichandani. He submitted in all fairness that so far as abetment part is concerned, there is no evidence. It has to be accepted that there is nothing to indicate that there was some recent incident whereby the appellant abetted or prompted the deceased to commit suicide, but according to Mr. Abichandani, there is ample evidence to support the prosecution case about the appellant subjecting the deceased with cruelty and treating her with cruelty consistently. He therefore urged that conviction under Section 498A has to be confirmed.

4.1 According to Mr. Abichandani, the decision relied upon by Mr. Qureshi in the case of Sanju alias Sajjay Singh Sengar (supra) will not be applicable to the facts of the present case. According to him, the emphasis of the judgement is not on the gap of two days between the incident of suicide and the earlier incident when the accused told the deceased to go and die. The apex Court has ruled that using these words by themselves would not constitute the ingredient of instigation. Presence of mens-rea is necessary concomitant to the instigation, as held by the apex Court. Mr. Abichandani therefore submitted that this judgement may not help the appellant.

5. Having regard to the contentions raised before this Court, what transpires is that the prosecution has examined following witnesses to prove the charges against the accused persons.

- (i) Karsan Tapu, Ex. 14
- (ii) Jayanti Manga, Ex. 15
- (iii) Dilip Manga, Ex. 17 and
- (iv) Gomtiben Manga, Ex.18

Of the above witnesses, Karsan Tapu happens to be the neighbour of the appellant. He has not supported the prosecution case. He denied the suggestion in cross-examination to the Public Prosecutor that he had stated before the Police that there were family disputes going on between the husband and wife for quite some time and he was beating her off and on.

5.1 Witness Jayanti Manga is the brother of the

deceased. He says his sister was married to the appellant in 1982. The incident occurred in 1986. He says his sister had come to the parental house once or twice on a casual visit and had told that the appellant and his parents are harassing her and are beating her. He says that she was then admitted in the hospital on account of some sickness and she had a miscarriage, which according to him, was due to beating. He says that his mother and his brother had gone to the hospital for bringing the deceased to their house but she was not permitted to go but later on appellant himself came and dropped her to the parental house. She stayed there for about six months at that point of time. Then Sharda was sent back to her matrimonial house about six months prior to the incident. They had invited the deceased to attend Shrimant ceremony of the wife of his brother Dilip, but appellant did not permit Sharda to go and on the previous day of that Shrimant, they received the news about the deceased having sustained burns injury.

5.2 The witness has been subjected to cross-examination and he stated that whenever deceased used to come to parental house for casual visit, both the deceased and her husband (appellant) used to come together, they lived together and left together happily. He admits during the cross-examination that he had no occasion to visit his sister Sharda during last 8 to 10 months.

5.3 Witness Dilip Manga, who also happens to be brother of the deceased says in his deposition at Ex. 17 that whenever deceased came to the parental house, she complained of ill-treatment by the appellant and his parents. She had come three times on such occasions after having dispute with her husband. He says that when she was pregnant, she was beaten by her husband and she had a miscarriage. During cross-examination he denies that Sharda had sustained accidental burns injury.

5.4 Gomtiben Manga, mother of deceased Sharda in her deposition Ex. 18 says that the appellant used to ill-treat her daughter and when her husband Manga expired, the appellant took away deceased Sharda to her matrimonial house even before completion of one month. She says that she had sent her son to fetch Sharda on learning about that she had a miscarriage. The appellant had refused the request, however, both appellant and the deceased had later on gone to the parental house of the deceased and the appellant had then left. Sharda had stayed for about 8 days and then the appellant had taken her away. This witness has been cross-examined, but

nothing much turns on that.

5.5 Apart from the above depositions, there is medical evidence of Dr. Mansukh Patel, Ex. 9, Post-mortem Note Ex.13 to indicate that the deceased had met with unnatural death. Other witnesses are Police witnesses.

6. This Court has taken a close look at the record and proceedings, particularly the evidence of Jayanti, Dilip and Gomtiben, who are the only witnesses who say something against the appellant to connect him with the offences alleged.

7. Despite a close scrutiny, neither in the Examination-in-Chief, nor in the cross-examination anything is found to indicate any material to suggest that the appellant had caused any abetment to the deceased which would have prompted her to commit suicide. In fact, what transpires is that Dilip had no occasion to visit his sister during last 6 to 8 months time after she left the parental house and the incident occurred. There is not a word coming from any of the depositions to indicate even ill-treatment or action which can be said to be sufficient to prompt the deceased to commit suicide. Learned APP Mr. Abichandani is thus, justified in not opposing the appeal so far as conviction under Section 306 of IPC is concerned.

8. At the same time it has to be recorded that learned Advocate Mr. Qureshi was not in a position to assail the judgement on conviction of the appellant for offence punishable under Section 498A IPC. There is sufficient evidence in the depositions of these witnesses to indicate that occasionally the appellant used to ill-treat the deceased and give her beating. The only argument that is advanced to assail this evidence is that no action was taken for such treatment at the relevant time. It cannot be over-looked that incident has occurred in a family of a community where educational level is low and there is always an attempt on the part of the relatives to sort out the problems themselves which may become difficult if some action is initiated and when such action may be delayed, that by itself not be a ground for not believing the version of close relatives of the deceased. It would also not be proper always to accept supporting evidence from independent sources unless some other defect is indicated in evidence of witnesses who are relatives. This Court is therefore not inclined to interfere with the conviction of the appellant so far as offence punishable under Section 498A

is concerned.

8.1 Learned Advocate Mr. Qureshi has placed reliance in the case of Sanju alias Sanjay Singh Sengar (supra), and submitted that the apex Court did not accept the case against the appellant because of a time gap of two days between the deceased committing suicide and the accused saying "to go and die". However, on perusal of the judgement it is found that the case of the appellant was accepted by the apex Court as there was no material to indicate that the appellant used those words with mensrea. The apex Court said the word "instigate" denotes incitement or urging to do some drastic or unadvisable action or to stimulate or incite. Presence of mensrea, therefore, is the necessary concomitant of instigation. It is common knowledge that the words uttered in a quarrel or in a spur of the moment cannot be taken to be uttered with mensrea. It is in a fit of anger and emotional and therefore in absence of mensrea, those utterances were not accepted as abetment. This judgement does not have any direct bearing to the facts of the present case and cannot help the appellant.

9. So far as quantum of punishment is concerned, the appellant is sentenced to undergo RI for two years and to pay a fine of Rs. 2,000/- in default to undergo SI for 3 months. Learned Advocate Mr. Qureshi submitted that the appellant is a poor man and is a scrap-hawker. He has married after the incident and has four young children to maintain. The appellant was on bail during the trial and has almost undergone two years sentence and therefore, mercy may be shown to him.

10. No special reasons are indicated to interfere with the discretion of the trial Court used in imposing sentence. It cannot be said that the punishment is too harsh or disproportionate and therefore, this Court is not inclined to interfere with the quantum of sentence either. The conviction under Section 498A of IPC and the sentence imposed therefor has to be confirmed.

11. For the foregoing reasons, the appeal is partly allowed. Conviction of the appellant under Sec. 306 of IPC is hereby set aside and he is acquitted of the said charge.

Conviction of the appellant for offence punishable under Section 498A IPC is confirmed. There shall be no change in the sentence. Appeal stands disposed of accordingly.

(A.L.Dave, J.)

*/Mohandas